

FERNANDO LOPEZ,)	
)	
Plaintiff(s),)	No. C 06-5071 TEH (PR)
)	
v.)	ORDER OF SERVICE
)	
M. S. EVANS, J. CELAYA, M.)	(Docket nos. 2, 4)
WALKER AND E. CAMARENA,)	
)	
Defendant(s).)	

DISCUSSION

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable

1 claims or dismiss the complaint, or any portion of the complaint, if the complaint
2 "is frivolous, malicious, or fails to state a claim upon which relief may be
3 granted," or "seeks monetary relief from a defendant who is immune from such
4 relief." Id. § 1915A(b). Pro se pleadings must be liberally construed, however.
5 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

6 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
7 elements: (1) that a right secured by the Constitution or laws of the United States
8 was violated, and (2) that the alleged violation was committed by a person acting
9 under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

10 B. Legal Claims

11 Liberally construed, Plaintiff's allegations state a claim for denial of
12 procedural due process against Defendant N. Walker and will be served. See
13 Wolff v McDonnell, 418 U.S. 539, 566 (1974) ("inmate facing disciplinary
14 proceedings should be allowed to call witnesses and present documentary
15 evidence in his defense when permitting him to do so will not be unduly
16 hazardous to institutional safety or correctional goals"); Superintendent v. Hill,
17 472 U.S. 445, 455 (1985) (some evidence in the record must support conclusion
18 reached by disciplinary board).

19 Plaintiff's claims against Warden Evans fail because Plaintiff has alleged
20 no basis for liability on his part and it is well-established that there is no
21 respondeat superior liability under 42 USC § 1983. Or, in layman's terms, that
22 there is no liability under § 1983 solely because one is responsible for the actions
23 or omissions of another. See Taylor v List, 880 F2d 1040, 1045 (9th Cir 1989).
24 In addition, Plaintiff's claims against Defendants Camarena and Celaya also fail,
25 as Plaintiff has not alleged the violation of his constitutional rights by either of
26 these Defendants. If Plaintiff can make such a showing, he may seek leave to file
27

1 an amended complaint.

2 C. Motion for Counsel

3 Plaintiff has filed a motion seeking appointment of counsel based on
4 limited access to the law library and knowledge of the law (docket no. 4).

5 **CONCLUSION**

6 For the foregoing reasons and for good cause shown,

7 1. The Clerk shall issue summons and the United States Marshal shall
8 serve, without prepayment of fees, copies of the complaint in this matter, all
9 attachments thereto, and copies of this order on the Defendant N. Walker at
10 Salinas Valley State Prison. The Clerk also shall serve a copy of this order on
11 plaintiff.


12 2. All claims against Defendants Evans, Camarena and Celaya are
13 DISMISSED and the Clerk shall TERMINATE them as Defendants in this
14 action.

15 3. All communications by Plaintiff with the Court must be served on
16 defendants, or defendants' counsel once counsel has been designated, by mailing
17 a true copy of the document to Defendants or Defendants' counsel.

18 4. It is Plaintiff's responsibility to prosecute this case. Plaintiff must
19 keep the court and all parties informed of any change of address and must comply
20 with the court's orders in a timely fashion. Failure to do so may result in the
21 dismissal of this action under Federal Rule of Civil Procedure 41(b).

22
23 SO ORDERED.

24
25 DATED: 03/06/07

26 

THELTON E. HENDERSON
United States District Judge